

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROGER A. TANUIS)	
Claimant)	
VS.)	
)	Docket No. 217,819
GREAT PLAINS CASTING, INC.)	
Respondent)	
AND)	
)	
SENTRY INSURANCE A MUTUAL COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from a July 24, 1997, preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

The Administrative Law Judge granted claimant's request for preliminary benefits, finding claimant's current condition was the natural consequence of his original compensable injury. The respondent challenges the compensability of the claim, alleging claimant subsequently suffered a new and distinct nonwork-related injury. Specifically, respondent requests the Appeals Board to review the following issues:

1. Whether the claimant suffered an accidental injury and, if so, whether the injury arose out of and in the course of his employment.
2. Whether medical expenses incurred by claimant should be paid as authorized medical expense.
3. Whether the Administrative Law Judge erred in granting claimant's request for TTD to be paid from April 1, 1997 until claimant is released to return to work.

4. Whether the respondent should be required to provide a list of three physicians to the claimant, from which an authorized physician could be chosen.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board is granted jurisdiction to review preliminary hearing orders involving a disputed issue of whether the employee suffered an accidental injury which arose out of and in the course of the employee's employment. See K.S.A. 44-534a, as amended. At this stage of the proceedings, the Appeals Board does not have jurisdiction to review the issues respondent raises concerning the payment of medical expenses, temporary total disability compensation, and medical treatment.

It is not disputed that claimant sustained a compensable back injury on July 29, 1996. The dispute arises because of an exacerbation of low back symptoms claimant suffered on March 30, 1997. The central question is whether that incident was a natural consequence of the original work-related injury or instead constituted a new, separate, distinct accident. The Administrative Law Judge found the March 30, 1997, exacerbation occurred as a natural consequence of claimant's prior compensable injuries. Based upon the evidence presented and for the reasons discussed below, the Appeals Board finds that the Administrative Law Judge's conclusion should be affirmed.

On Sunday, March 30, 1997, claimant was at his home showing his children how to rake leaves when he suffered a severe onset of low back and radicular pain. Just two days earlier claimant had been seen by his treating physician, Michael S. Patterson, M.D. At that time it was noted that claimant was still suffering from mechanical low back pain. Dr. Patterson decided that further formal physical therapy would not be of significant benefit to claimant. However, claimant was encouraged to maintain a regular program of back exercises on his own. Dr. Patterson continued claimant's light-duty work restriction of no lifting above 25 pounds. Claimant was scheduled to return for another follow-up appointment. Although Dr. Patterson found claimant to have reached maximum medical improvement in his March 28, 1997, medical record offered into evidence at the preliminary hearing, he is equivocal in giving this opinion.

Following the May 9, 1997, preliminary hearing, the Administrative Law Judge appointed Paul S. Stein, M.D., as a neutral physician to perform an independent medical examination of claimant. Dr. Stein was requested to offer his opinions as to the following:

diagnosis; recommendations for treatment; Claimant's ability to work and, if so, appropriate temporary work restrictions; and whether Claimant's complaints are causally related to Claimant's alleged accidental injury herein of July 29, 1996, or whether Claimant had fully recovered from the effects of that injury at the time of or prior to the leaf raking incident of March 30, 1997.

Dr. Stein examined claimant on June 4, 1997. His report makes no mention of the March 30, 1997, incident. His diagnosis was lumbar strain. Dr. Stein recommended no changes in claimant's work restrictions from those given by Dr. Patterson. Dr. Stein did recommend a repeat MRI scan since claimant had not had one done since 1996. Following that scan, Dr. Stein issued a supplemental report. He described the MRI scan as an essentially negative study. He did not consider surgical intervention to be indicated. However, Dr. Stein did recommend a referral to a physiatrist "for a more long term formal rehab and therapy program and hopefully a weight reduction and conditioning program."

Two days before the March 30, 1997 aggravation, Dr. Patterson reported claimant was still symptomatic. He kept claimant on a light-duty work restriction and scheduled him for a follow-up appointment. The activity which preceded the aggravation of symptoms on March 30 was not described as forceful or traumatic. There is no medical opinion relating that activity as the cause of claimant's current condition. Claimant's work restrictions have not changed, although Dr. Stein disagrees with Dr. Patterson concerning the relative merit of a long-term rehabilitation program.

It is well settled in this state that an accidental injury is compensable where the accident only served to aggravate or accelerate an existing disease or to intensify the affliction. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978); Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976); Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 678 P.2d 178 (1984). The Appeals Board agrees with the conclusion by the Administrative Law Judge that claimant's current condition is compensable as a natural consequence of the prior compensable injuries.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the July 24, 1997, Order of Administrative Law Judge Bruce E. Moore should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS
Kurt W. Ratzlaff, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director